

EXECUTIVE NOTE TO THE INQUIRIES (SCOTLAND) RULES 2007 (S.S.I. 2007/ 560)

The power to make these Rules is conferred by section 41 of the Inquiries Act 2005. They are subject to negative procedure.

Policy objectives

The Inquiries Act 2005 provides a framework for inquiries established by Ministers within the United Kingdom, into events that have caused or are capable of causing public concern. Broadly speaking, the Scottish Ministers may set up inquiries where the terms of reference require the inquiry to determine any fact or make any recommendation that is wholly or primarily concerned with a matter which is within their competence in accordance with the devolution settlement.

Section 41 of the Act contains provisions for the making of rules to cover three particular areas: matters of evidence and procedure; the return or keeping of documents to, or created by, an inquiry after the end of the inquiry; and awards to be made by the chairman to persons involved in an inquiry. Scottish Ministers are permitted to make rules for inquiries for which they are responsible.

The Scottish draft rules would usually apply to inquiries established by Scottish Ministers and which are wholly or primarily concerned with a Scottish matter. It is possible, however, that Scottish and UK Ministers may agree that the Scottish rules of procedure should apply to a joint inquiry which is set up by them jointly and which is held in Scotland. (UK) Inquiry Rules 2006 (S.I. 2006/1838) may also apply to an inquiry which has been set up by a UK Minister, but which is based in Scotland which is reserved to the Westminster Parliament.

The Scottish Rules broadly follow the scheme of the UK rules, but have been amended to take Scottish circumstances into account. For example, the Scottish rules leave it to the discretion of the chairman as to whether opening and closing statements may be made by core participants or their legal representatives, and reviews of the amount of awards made for legal representation will be carried out by the Auditor of the Court of Session.

Consultation

A consultation exercise was carried out on the rules in the early summer and the Rules reflect concerns which were felt to merit amendment. For example, it is now left to the discretion of the inquiry panel as to whether written statements will be required from witnesses before they give evidence. To some extent, the Scottish rules allow the chair greater discretion than the UK rules.

Regulatory Impact Assessment

None required as there is no impact on business.

Financial Effects

The only financial effect of the rules would occur when the rules are applied to a public inquiry held in Scotland and this would fall on the Scottish Government. Public inquiries are

relatively rare in Scotland and it is expected that the costs would be met from existing resources. The rules continue the previous practice whereby the legal expenses of families who have been bereaved in the incident or accident which led to the inquiry are met by the department which sponsors the inquiry.

Scottish Government
Civil Justice and International Justice Directorate
December 2007